

J. McGuire



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Robert Veleta - Overtime Compensation -
Military Leave
File: B-225183

Date: September 3, 1987

DIGEST

An employee's claim for compensation for 8 hours of overtime work which he claims he would have worked but for being on military leave while on duty with his Reserve unit may not be allowed because he presented no evidence that the overtime was regularly scheduled or approved prior to the administrative workweek.

DECISION

This action is in response to a request for a decision pursuant to 4 C.F.R. § 22.1 et seq., from the union representing Mr. Robert Veleta regarding his claim for overtime pay while on military leave for a period he was serving on active duty in the Reserves.^{1/} It is our view that the overtime involved is not compensable since it was not regularly scheduled; thus the claim may not be paid.

Mr. Robert Veleta, a civilian employee at the Naval Air Rework Facility in Jacksonville, Florida, was on military leave during the period May 10 to May 23, 1986. On May 17, 1986, the employees in Mr. Veleta's shop were required to work overtime. Mr. Veleta requested pay for 8 hours of overtime, asserting that he would have worked overtime and received the pay had he not been on military leave. He submitted a grievance to the Department of the Navy.

The agency issued a formal grievance decision denying Mr. Veleta's claim, noting that overtime pay may not be included in the pay Mr. Veleta received for his military leave period unless the overtime work was "regularly scheduled." The agency made the determination that, while

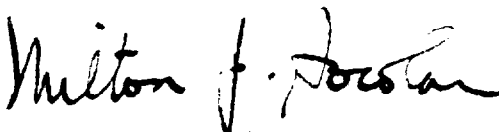
^{1/} The request was submitted by Robert W. Hall, Business Agent, Truck Drivers, Warehousemen & Helpers of Jacksonville, Local 512, Jacksonville, Florida.

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he would have been required to work overtime on the day in question had he not been on military leave, the work was not scheduled in advance of the administrative workweek, nor was it of a regular and recurring nature; thus, it did not meet the definition of regularly scheduled overtime work.

Mr. Veleta's claim is based on 5 U.S.C. § 6323, which requires that an employee not suffer loss in pay for the period he is away on military leave. In order for overtime work to be compensable with respect to an employee on military leave, the overtime duty must have been "regularly scheduled" and it must be clear that the employee would have been required to work the overtime. Regularly scheduled work means work that is scheduled in advance of an administrative workweek. 5 C.F.R. § 550.103(p). We have recognized that the requirement that the overtime work be regularly scheduled may be distinct from the requirement that the employee would have been required to work the overtime. Howard L. Young, B-202864, August 10, 1982, reconsidered, B-202864, September 2, 1983; and B-226735, May 22, 1987.

In the present case Mr. Veleta asserts that all employees in his shop were required to work on the date in question and thus he would have been required to work had he not been on military leave. He also asserts that he has been unfairly paid less than he would have been had he not been serving on military duty. However, he has provided no arguments or evidence showing that the work was regularly scheduled; that is, scheduled in advance of the administrative workweek. And as indicated previously, the agency determined it was not scheduled in advance. Accordingly, we find that the claim must be denied.

for 
Comptroller General
of the United States